SINGLE BENCH

(1)

CF1002 (5)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

(S.)

WRIT PETITION NO. 5040 OF 2006

PETITIONER:

Janakram Patel,
Son of I.P. Patel,
Aged about 43 years,
Presently working as Assistant Engineer/SDO, Water Resources Division, Champa, JBC, Sub-Division No.3, Birra,
District-Janjgir Champa (C.G.)

P.R. No. 5051/06
Presented by Sri Akhilesh Jha Advocate
dated 11/01/06

VERSUS

RESPONDENTS:

1. State of Chhattisgarh,
Through its Secretary,
Water Resources Department,
Mantralaya, D.K.S. Bhawan,
Raipur (C.G.)

2. Executive Engineer,
Water Resources Division, Champa,
Minimata Bango, Canal Division No.2, Champa,
District-Janjgir Champa (C.G.)

3. P.K. Chauhan,
Assistant Engineer, Office of the Executive Engineer, Minimata Bango, Canal Division No.2,
Champa, District-Janjgir Champa,
(Chhattisgarh).

Received Clerk to AG
11/9/06

OATH COMMISSIONER
APARNA MALVIYA
CG 2073/90
16/05/06
Bilaspur Chhattisgarh

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5040 of 2006

Petitioner Janakram Patel

Versus

Respondents State of Chhattisgarh & others

Post for order on 11th October, 2006.

Sd/-
Satish K.Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5040 of 2006

Petitioner: Janakram Patel

Versus

Respondents: State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Manindra Shrivastava, Senior Advocate with Shri Akhilesh Dalpati, Advocate for the petitioner.

Shri V. V. S. Moorthy, Deputy Advocate General for the respondents No. 1 and 2.

Shri Pankaj Shrivastava, Advocate for the respondent No.3.

ORDER

(11th October, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner, in the instant petition, assails the impugned order dated 6.9.2006 (Annexure P/4) whereby the order dated 4.7.2006 (Annexure P/2) was modified to the extent that the petitioner was posted to the post of Assistant Engineer (Rupan) in the Office of the Executive Engineer, Minimata Bango Canal Division No. 2 Champa (in place of the respondent No.3).

2. The undisputed facts in nutshell are that the petitioner is employed as Assistant Engineer/Sub Divisional Officer in Water Resources Department, Government of Chhattisgarh. The petitioner vide order dated 4.7.2006 (Annexure P/2) was transferred from the post of Sub Divisional Officer, Minimata Bango Canal, Sub Division No.2 – Baradwar to the post of Sub Divisional Officer, J.B.C. Sub Division No. 13 Birraa, Champa

(in place of Shri Tapas Kumar Majumdar). The petitioner accordingly joined the new place of posting vide communication dated 27.7.2006 (Annexure P/3).

3. Thereafter vide order dated 6.9.2006 (Annexure P/6) the earlier order dated 4.7.2006 (Annexure P/2) was modified and the petitioner was posted as Assistant Engineer (Rupam), in the Office of the Executive Engineer, Minimata Bango Canal Division No. 2 Champa i.e. in place of the respondent No.3. The petitioner has impugned the order dated 6.9.2006 in this petition on the ground that the order is tainted with malice as the same was passed to accommodate and adjust the respondent No.3. The impugned order is contrary to the transfer guidelines dated 26.5.2006 (Annexure P/5). The transfer order is arbitrary, unjustified, unreasonable and without public interest or administrative exigency.

4. Shri Manindra Shrivastava, learned senior counsel with Shri Akhilesh Dalpati, learned counsel appearing for the petitioner submitted that the impugned order is bad in law, arbitrary and unreasonable on the grounds stated (supra).

5. Shri V. V. S. Moorthy, learned Deputy Advocate General, appearing for the respondents No. 1 and 2 on the contrary submitted that the order passed was due to the administrative exigency in public interest and the transfer order contains not only the names of petitioner and respondent No.3 but by the said transfer order, placement of four more persons were effected. Learned counsel further submitted that the transfer guidelines dated 26.5.2006 clearly provides for modification/cancellation of the transfer order in coordination of the Chief Minister through

the Chief Secretary. In the present case the impugned order was passed in coordination with the Chief Minister as is evident from the impugned order itself which was endorsed to the principal Secretary to the Chief Minister and further the impugned order is not a transfer order but adjustment of the placement of the petitioner and the respondent No.3 within the same district.

6. It was further contended that the averment of the petitioner to the effect that the transfer order was passed in exercise of the powers tainted with malafide, malice, unreasonableness, contrary to the transfer guidelines is without any basis as there is no material to substantiate the averments except the bald statements made in the petition.

7. Having heard learned counsel for the parties and having perused the documents annexed thereto, it is evident that the petitioner has failed to establish any malafide or malice against the respondents. It appears that the impugned order is not a transfer order but the placement within the district and the same was done due to administrative exigency in the public interest. There is no violation of the transfer guidelines dated 26.5.2006 which clearly provides for cancellation/modification of the transfer order in coordination with the Chief Minister. The present impugned order is bearing endorsement to the Principal Secretary to the Chief Minister as required under the transfer guidelines. Thus, there is no breach of the transfer guidelines.

8. I have examined the facts of the case. The allegations, stated above, have not been established in the facts of the case. The Supreme Court in the Case of **Kendriya Vidyalaya Sangathan**

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Vs. Damodar Prasad Pandey and others[1] has observed as under:-

> "4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa[1]. unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India v. S.L. Abbas[2]). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In Union of India v. Janardhan Debanath[3] it was observed as follows : (SCC p. 250, para 9)
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> "No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a mater of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan[4]."

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9. It is well settled principle of law that transfer is an incident of service and it is for the employer to decide as to where a particular officer/employee be posted keeping in view public interest as well as administrative exigency. This Court has limited jurisdiction to interfere in the transfer matter and this Court can interfere only in the case of proved malafide, non-competence of authority passing the transfer order and transfer order not being in conformity with the rules and regulations. The petitioner/employee cannot be permitted to remain at one place, forever, by Court orders.

10. The petitioner has not made out any case for interference by this Court in the present transfer.

11. For the reasons and as a result this petition is dismissed. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

(2004 (12) SCC 299)[1]

Thakur